

December 8, 2004



Marlene H. Dortch
Secretary
Federal Communications Commission
TW-A325
445 Twelfth St., SW
Washington, DC 20554

Re: *Notice of Ex parte* presentation in MB Docket No. 99-25

Dear Ms. Dortch:

On December 7, 2004, Gloria Tristani of the Office of Communication of the United Church of Christ, Inc, Pete Tridish of the Prometheus Radio Project, Harold Feld of Media Access Project, Michael Bracy of the Future of Music Coalition, and Sascha Meinrath of LPFM licensee in Champaign Urbana, IL., met with Ken Feree, Bob Radcliffe, Jim Bradshaw, Peter Doyle, Peggy Greene, Stephen Svab, Steven Broeckart, and Natalie Roisman, all of the Media Bureau.

UCC, *et al.* reviewed the pending outstanding issues outlined in detail in the September 30, 2004, written *ex parte* filed by Cheryl Leanza of Media Access Project. In support of reclassifying changes in location of the transmitter and certain changes in ownership as minor amendments, Mr. Meinrath described the experience of LPFM Licensee xxxx. After three years of waiting, the site selected for the transmitter was no longer available and several members of the governing board of the licensee had been replaced through natural attrition. As written, these changes required a major amendment, which would make it extremely difficult for the licensee to begin to build the transmitter within the 18-month limit of the construction permit. Mr. Meinrath also stated that a regular schedule of windows for filing would make it much easier for licensees and prospective licensees to comply with Commission deadlines. Mr. Tredish also stated that he routinely receives phone calls from would-be licensees asking for information as to when a new window will open.

With regard to use of translator interference criteria rather than existing methodology to determine possible new opportunities for LPFM stations, staff asked why LPFM advocates favored a more complex method requiring submission of engineering data when they had previously favored the simpler method of distance spacing. UCC, *et al.* replied that, given existing legislative constraints and continued population of the band since the Commission initially set the service rules in 2000, it will be virtually impossible to create new LPFM stations absent a change in methodology. Accordingly, UCC, *et al.* now favor use of translator interference measurement criteria despite its complexity, since this would allow a greater number of new stations. UCC, *et al.* observed that the issue of methodology was raised in the initial rulemaking and was timely raised in UCC, *et al.*'s *Second Petition for Reconsideration and Clarification*, MM Docket No. 99-25 (filed June, 2001). Accordingly, the FCC can resolve the matter without further notice of proposed rulemaking. UCC, *et al.* noted that there is precedent in harmonizing the LPFM and translator interference rules, as the Commission uses a similar approach in Low Power Television and television translators. [CITE]

With regard to relative primacy to translators, UCC, *et al.* observed that this issue had been timely raised by both UCC and by National Public Radio in Petitions for Reconsideration and therefore require no further notice of proposed rulemaking to resolve. *National Public Radio Pet. for Reconsideration*, MM docket No. 99-25 at 19-20 (filed March 16, 2000); *Opposition and Response of UCC, et al.*, MM Docket No. 99-25 at 4-5 (filed April 24, 2000). UCC, et al. have filed additional comments in other proceedings explaining why LPFM stations, which produce local programming, should be given primacy over translators which merely import different programming. See, e.g., *Comments of Prometheus Radio Project, et al., on the Mitre Study*, MM docket No. 99-25 (filed Oct. 14, 2003). More recently, Chairman Powell has highlighted the important role LPFM stations play in provide genuine local content and service to local communities. "FCC Chairman Powell Launches 'Localism In Broadcasting Initiative,'" August 20, 2003. The Commission's recent Notice of Inquiry on Localism further highlighted the important roll of LPFM stations in serving local communities. *In re Broadcast Localism*, MB Docket No. 04-233 at ¶¶43-45 (rel. July 1, 2004) (Explicitly asking what steps the Commission should take to "promote" LPFM and highlighting the need to resolve conflicts with translators). These factors weigh heavily in favor of granting primacy to LPFM stations over translators.

Staff asked whether primacy would apply propsoectively, or would apply to all current and pending translator applications. UCC, *et al.* responded that, as a legal matter, all translator applicants knew or should have known of the pendancy of this issue when they applied. Accordingly, no legal barrier exists to application of primacy prospectively. In any event, the Commission is always at liberty to alter the regulatory scheme of licensees to balance among competing interests prospective licensees. See, e.g., *TeledesicLLC v. FCC*, 275 F.3d 75 (2001).

As a matter of equity, UCC, *et al.* argued that LPFM applicants had properly filed well before the current translator application windows and that LPFM was not a new entrant seeking to displace well-established incumbents. LPFM stations had initially been the intended beneficiaries of much of the spectrum when the current rules were put in place, and the rules should be adjusted in light of the reality of the last four years to reflect the initial bargain between the Commission and the LPFM and translator services. Finally, as a matter of pure public interest analysis, the Commission has always favored the creation of diverse local content. Accordingly, the Commission should apply a change in primacy to pending applications and existing LPFM/translator conflicts.

In accordance with Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206, this letter is being filed with your office. If you have any questions, please do not hesitate to contact me.

Respectfully Submitted,

Harold Feld
Associate Director

cc:

Ken Feree
Bob Radcliffe
Peter Doyle
Peggy Greene
Stephen Svab
Steven Broeckart
Natalie Roisman